

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM JAMES COKE SR.,

Plaintiff,

-against-

CHIEF MEDICAL OFFICER AND DEPUTY
COMMISSIONER CARL J. KOENIGSMAN;
MEDICAL DIRECTOR ROBERT
BENTIVEGNA; MEDICAL DIRECTOR
FREDRICK BERNSTEIN; PRIMARY CARE
PROVIDER YELENA KORBKOVA; MEDICAL
DIRECTOR DEBRA GEER; SHELLY
MALLOZZI, GRIEVANCE PROGRAM AND
DIRECTOR; NURSE CHRISTINE RAFFAELE,
COUNSEL'S OFFICE (RETIRED),

Defendants.

19-CV-10038 (PMH)

ORDER OF SERVICE

PHILIP M. HALPERN, United States District Judge:

Plaintiff, currently incarcerated in Sing Sing Correctional Facility, brings this *pro se* action alleging that Defendants violated his constitutional rights. By order dated November 21, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹

DISCUSSION

A. Service on Shelly Mallozzi, Grievance Program and Director; and Nurse Christine Raffaele, Counsel's Office (Retired)

Because Plaintiff has been granted permission to proceed IFP, Plaintiff is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on Defendants Shelly Mallozzi, Grievance Program and Director; and Nurse Christine Raffaele, Counsel’s Office (Retired), through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these Defendants.

Plaintiff must notify the Court in writing if Plaintiff’s address changes, and the Court may dismiss the action if Plaintiff fails to do so.


CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to issue summonses, complete the USM-285 forms with the addresses for Shelly Mallozzi, Grievance Program and Director; and Nurse Christine Raffaele, Counsel's Office (Retired), and deliver all documents necessary to effect service to the U.S. Marshals Service.

SO ORDERED.

Dated: June 24, 2020
New York, New York

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

PHILIP M. HALPERN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Shelly Mallozzi, Grievance Program and Director
Harriman State Campus
1220 Washington Avenue
Albany, NY 12226
2. Nurse Christine Raffaele, Counsel's Office (Retired)
New York State Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
Albany, NY 12226